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Amendment of UNDP financial regulations and rules regarding ex-gratia payments*

Summary

In the aftermath of the bombing in Algiers it was evident to UNDP that in certain circumstances ex-gratia payments may need to exceed the limit currently set in our Financial Regulations and Rules. UNDP feels that it would be important to be able to respond appropriately should there be another crisis in the future.

UNDP is requesting the Executive Board to approve an amendment to its Financial Regulation 23.01 in order to permit ex-gratia payments in excess of the current limit of $50,000. UNDP would also like to inform the Board that it is changing its Financial Rule 123.01 (a) to reflect the requirement that an opinion on the matter of ex-gratia payments is to be provided by its Legal Support Office of Bureau of Management rather than that by the United Nations Office of Legal Affairs.

The requirement that an opinion on the matter of ex-gratia payments must be provided by the Office of Legal Affairs of the UN Secretariat is a remnant from the revision of UNDP's Financial Regulations and Rules which took place in January of 2000. At that time UNDP did not have its own legal office, which was created in August of 2000. UNDP is therefore correcting its Rule 123.01 (a) to reflect that an opinion on the matter of ex-gratia payments should be provided by the Legal Support Office of UNDP.

The Advisory Committee on Administrative and Budgetary Questions (ACABQ) has recommended the approval of these proposed amendments to the Financial Regulation 23.01 and Financial Rule 123.01 (a).

Elements of a decision

The Executive Board may wish to: (a) agree to the proposed change in Financial Regulation 23.01 and (b) take note of the change in Financial Rule 123.01.

*The compilation of data required to provide the Executive Board with the most current information has delayed submission of the present report.

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I. Introduction

1. Ex-gratia payments are payments which are made where there is no legal liability to UNDP, but the moral obligation justifies making such payments, which are in the interest of UNDP. In the aftermath of the bombing in Algiers it was evident to UNDP that there may well be circumstances where UNDP will be faced with the need to make ex-gratia payments in the future. In some cases these payments may need to exceed the limit currently established in our Financial Regulations and Rules. UNDP feels that should a crisis occur, it would be important to be able to respond appropriately, while disclosing these payments in the submission of UNDP financial statements (schedule 3) to the United Nations General Assembly and to the Executive Board.

II. Proposed amendments

2. This paper serves the purpose of requesting the Executive Board for approval of an amendment to UNDP Financial Regulation 23.01 to permit it to make ex-gratia payments in excess of the current limit of $50,000. This paper also informs the Executive Board that UNDP is changing its Financial Rule 123.01 (a). An opinion on the matter of ex-gratia payments will be provided by the UNDP Legal Support Office in the Bureau of Management, rather than by the United Nations Office of Legal Affairs. For the proposed text of Financial Regulation 23.01 and Financial Rule 123.01 (a), please refer to the annex, 'Proposed amendments to the financial regulations and rules'.

III. Justification for amendments

3. Currently, UNDP Financial Regulation 23.01 states that "[t]he Administrator may make such ex-gratia payments not exceeding $50,000 as he/she deems to be necessary in the interest of UNDP, provided that a statement of such payments shall be submitted to the General Assembly and the Executive Board with the financial statements." This Regulation has been interpreted as covering cumulative approvals for a 12-month period.

4. UNDP is requesting Executive Board approval of the amendment to its Financial Regulation 23.01 so as to remove the limit of $50,000 for ex-gratia payments.

5. Financial Regulation 23.01 relating to ex-gratia payments in excess of the $50,000 limit has not been changed since the Financial Regulations and Rules were revised in 2000. At that time, the limit for making ex-gratia payments was increased from $40,000 to $50,000. The present limit on ex-gratia payments has meant that, in certain instances, UNDP has been unable to make payments in cases where it has no legal liability, but the moral obligation makes the payments justifiable. UNDP should be able to show compassion when addressing such cases.

6. While the current UNDP and UNFPA Financial Regulations contain a financial limitation on ex-gratia payments, the financial regulations of the United Nations Secretariat, the United Nations Children's Fund and the World Food Programme

(WFP) contain no such limitation. With the proposed amendment, UNDP seeks to harmonize its approach with those of the other Funds and Programmes. UNFPA, too, is in the process of harmonizing its Financial Regulations with respect to the limit of ex-gratia payments.

7. UNDP does not expect the proposed change to result in a significant financial impact for UNDP over a period of time, given the low number of such payments that UNDP has had to address to date. As in the past, the payments would be included in the submission of UNDP financial statements (schedule 3) to the United Nations General Assembly and the Executive Board.

8. Financial Rule 123.01 (a), states that "ex-gratia payments may be made in cases where, although in the opinion of the United Nations Office of Legal Affairs there is no legal liability on UNDP, the moral obligation is such as to make payment desirable in the interest of UNDP."

9. UNDP would like to inform the Executive Board that it is changing its Financial Rule 123.01 (a) to reflect the requirement that an opinion on the matter of ex-gratia payments should be provided by its Legal Support Office of Bureau of Management rather than that by the United Nations Office of Legal Affairs.

10. Financial Rule 123.01 (a) reflecting the requirement that an opinion on the matter of ex-gratia payments should be provided by the United Nations Office of Legal Affairs is a remnant from the revision of the UNDP Financial Regulations and Rules that was made in January of 2000. At that time UNDP did not have its own legal office, which was created in August of 2000. UNDP is now correcting Rule 123.01 to reflect that an opinion on the matter of ex-gratia payments should be provided by its Legal Support Office. With this amendment, UNDP is harmonizing its Financial Regulations and Rules with those of WFP, which contain no reference to the United Nations Office of Legal Affairs.

11. UNDP will continue the current internal clearance process for making ex-gratia payments. Requests for ex-gratia payments will continue to be cleared by the Assistant Administrator, Bureau of Management, following (a) a review by the Office of Finance and Administration and (b) an opinion from the Legal Support Office, prior to the Administrator's deciding to make such payments. All ex-gratia payments will continue to be the subject of audits by internal and external auditors.

12. The above proposed amendments have been shared with internal and external auditors (the Office of Audit and Investigations and the United Nations Board of Auditors respectively). Neither party has any objection to the changes.

13. UNDP has also discussed these proposed amendments with the ACABQ, which has recommended approval of the proposed amendments to the Financial Regulation 23.01 and Financial Rule 123.01 (a) regarding ex-gratia payments (see DP/2008/42).

14. UNDP and UNFPA are harmonizing their Financial Regulations with respect to ex-gratia payments in accordance with the amendments described above.

Annex
Proposed amendments to the financial regulations and rules

Note: Text in italics indicates proposed additions to the regulations and rules; proposed deletions have been struck through.

Regulation 23.01:

The Administrator may make such ex gratia payments ~~not exceeding $50,000~~ as he/she deems to be necessary in the interest of UNDP, provided that a statement of such payments shall be submitted to the General Assembly and the Executive Board with the financial statements.

Rule 123.01:

(a) Ex gratia payments may be made in cases where, in the opinion of the *United Nations Development Programme Legal Support Office*, there is no clear legal liability on the part of the United Nations Development Programme *and where such payments are in the* interest of the United Nations Development Programme.